

The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to the circular diplomatic note dated May 20, 1996, regarding the employment of personal servants, attendants, and domestic workers who are in the United States in nonimmigrant A-3 visa status, a copy of which is enclosed.

The Department wishes to inform the missions of a change in the requirements for the employment of domestic employees. Every prospective employer is required to offer a written contract of employment to the domestic employee (housekeeper, handyman, cook, gardener, babysitter, caretaker or other attendant). The contract must be in English and, if the domestic employee does not understand English, in a second language that he or she understands. Two copies of the contract should be signed by both parties with one for the employer and one for the domestic employee.

Domestic employees applying for an A-3 visa to enter the United States must provide a copy of the signed contract with their visa application.

Members of the diplomatic and consular community who wish to hire domestic employees who are already in the United States in A-3 visa status are also required

to offer a written contract of employment. When a request for a renewal or an extension of an A-3 visa is made, a copy of the current contract should accompany the request sent to the Department.

The employment contract is required to assist the employer and the employee in establishing a good faith employment relationship. Both parties to the contract are expected to carry out the terms of the contract. The contract should include the following:

- **Description of duties.** The contract should describe the work to be performed, e.g., housekeeping, gardening, babysitting, and must also include a statement that the domestic employee shall work only for the employer who signed the contract.
- **Hours of work.** The contract should state the normal working hours and number of hours per week. It is generally expected that a minimum of 35-40 hours per week of paid employment will be provided. It should also state that the domestic employee will be provided a minimum of at least one full day off each week. The contract should also indicate whether the domestic employee will be provided paid holidays, sick days and vacation days.
- **Minimum wage.** The contract shall state the hourly wage to be paid the domestic employee, provided that the rate will be the greater of the minimum wage under federal and state law or the prevailing wage for all working hours. The contract should state that wages will be paid to the domestic employee either on a weekly or biweekly basis and state what deductions are to be taken from the wages. If any deduction is taken for meals or lodging, it must be no more than is reasonable.

▪ **Transportation to and from the United States.**

The contract should state that the domestic employee will be provided with transportation to and from the United States.

- **Other terms of employment.** The contract must include a statement that the passport, visa, copy of the contract and other personal property of the domestic employee will not be withheld by the diplomatic or consular employer for any reason. Further, it should include a statement that the domestic employee's presence in the employers residence will not be required except during working hours. The contract may state other agreed-upon terms of employment, if any, provided they are fully consistent with U.S. law. Any modification to the contract must be in writing.

- **Record keeping.** To avoid possible misunderstanding, the employer will maintain for the duration of actual employment plus three years, the following records: A) the employee's full name, date and place of birth, gender and occupation; B) the employee's home address and telephone number in the United States; C) a record of the number of hours worked daily and weekly; and D) a copy of a check or dated receipt covering each pay period, including a record of any deductions made.

The Department also wishes to remind the embassies that all personal employees must be notified by the mission to the Office of Protocol upon arrival and departure (including abandonment) of employment or transfer to a new employer.

If an employer seeks to replace an employee or add to his/her existing domestic staff, the A-3 visa may be denied if there is reason to believe that the employer has failed to fulfill his/her obligations to

a former or current employee, such as to pay a fair wage. Domestic employees will be provided with a copy of the enclosed information sheet when obtaining their visas. The sheet informs them, in general terms, of their customary and legal rights while in the United States, including protection from abuse. The sheet also provides a complaint telephone number, 1-888-428-7581, in the event the domestic employee believes his or her rights are not being observed.

Enclosures:

- 1) May 20, 1996 diplomatic note
- 2) Information Sheet.

Department of State,

Washington, June 19, 2000.

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The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to the notes of January 9, 1981 and May 21, 1981, regarding the employment of personal servants, attendants, and domestics who are in the United States in nonimmigrant A-3 visa status, and to the note of November 15, 1989, regarding immunity from the jurisdiction of the United States.

The Department is concerned to learn of problems which continue to arise in the working relationships between some members of the diplomatic and consular community and their personal household employees. For example, from time to time, the Department has been informed of instances where wages have been withheld from personal domestics for undue periods; where the wages actually paid are substantially less than those stipulated at the time of employment; where passports have been withheld from the employee; where the actual number of working hours weekly is substantially more than those originally contemplated and with no additional pay; and where the employee has been forbidden from leaving the employer's premises even though off duty.

The Department also wishes to express its concern about persons entering the United States as personal

household employees of members of diplomatic missions and consular posts, who leave such employment after a short time and remain in the country illegally. It is clear that some of these persons undertake employment solely as a means to enter the United States and have no ***bona fide*** intention to work as personal household employees after they are here. The Department is concerned that such actions by personal household employees not only constitute abuses of their visa status, but also subvert the intentions of their diplomatic or consular employers for a good faith employment relationship.

The Department trusts that the missions share these concerns, and its commitment to the fair and reasonable working and living conditions for all personal servants, attendants, and domestics employed by foreign government officials in the United States. Accordingly, the Department wishes to inform the missions of the following information regarding guidelines for United States consular officers in considering applications for A-3 visas and, as appropriate, in considering renewals.

Every prospective employee is strongly encouraged to present with his or her visa application a copy of an employment contract, written in English and a language understood by the employee, which contains conditions of employment that are fair and reasonable in view of the duties to be performed and reflects the costs of living in the United States and domestic

employment laws and prevailing practices in the United States. Recommended contract provisions addressing certain core aspects of the employment relationship are set forth in the enclosure as guidance. This list of recommended provisions is for illustrative purposes only; United States consular officers have discretion to require additional or different clauses as the circumstances require. Additionally, the recommended provisions do NOT constitute an approved or model employment contract. Other contract provisions relating to the employment relationship may be required or advised under federal, state or local law. All employment contracts must conform to all applicable federal laws and the laws of the state and municipality of the place of employment. The embassy or employer may wish to consult counsel to ensure conformance of the contract with all applicable laws. The recommended provisions listed in the enclosure are provided as guidance only in order to assist in the establishment of a good faith, fair employer/employee relationship. Any revisions to the contract presented to the United States consular officer should be made in writing.

Although personal household employees are the employees of the mission member and not of the mission, the Department suggests that the mission may wish to review each employment contract, and suggests that it keep a copy on file at the mission and ensure that mission members respect their obligations as employers. As indicated in its circular note of November 15, 1989,

"ultimately, the United States will hold the Chief of Mission and the sending government responsible for the conduct of persons sent to the United States as diplomatic representatives or of others entitled to immunity." The mission is requested to remind its members that the Vienna Convention on Diplomatic Relations, Article 41, para. 1, and the Vienna Convention on Consular Relations, Article 55, para. 1 provide that without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State," including, for example, fair labor laws.

The Chiefs of Mission are advised that the Department will examine closely any case of alleged abuse of a personal servant, attendant or domestic that is brought to its attention. In all such cases, the Department will bring the allegations to the attention of the mission and take such other action as may be appropriate, which could include a request for a waiver of any applicable immunity. In appropriate circumstances, the Department will additionally inform the complainant that redress may be available under federal or local laws such as through the Wage and Hour Division of the United States Department of Labor in the case of unpaid wages. The Department wishes to advise the missions that it would consider the withholding of an employee's passport by the employer to be improper and inconsistent with a ***bona fide***



employer/employee relationship.

The Department wishes to remind the missions that it is the responsibility of employers of personal domestic servants to retransfer abroad all employees upon leaving their employ or upon the transfer of the employer. This responsibility remains applicable notwithstanding the circumstances surrounding the termination of the employment. The Department, however, will not object to the employee changing employers provided that the new employer is in a legal status to offer such employment, that the new employer offers fair and reasonable employment conditions and will assume the responsibility to retransfer the employee abroad at the conclusion of the employment.

The Department also wishes to remind the missions that all domestic employees must be notified by the missions to the Office of Protocol upon arrival in the United States and upon their departure or transfer to a new employer.

If an employer seeks to replace an employee or add to his/her existing domestic staff, the A-3 visa may be denied if there is reason to believe that the employer failed to fulfill his/her obligations to a former or current employee such as to pay a fair wage.

In conclusion, the Department wishes to assist in the establishment of compatible working relationships which will benefit both the employer and employee. The Department also wishes to advise the Chiefs of Mission that its commitment to fair and reasonable labor

conditions is consistent with a commitment to human rights and, further, comports with the practice of other governments and international organizations. This commitment is intended to better serve all members of the diplomatic and consular community.

Enclosure:

As stated.

A faint circular stamp is visible, containing the text "U.S. DEPARTMENT OF STATE" and "OFFICE OF THE ASSISTANT SECRETARY FOR PUBLIC AFFAIRS". Below the stamp, the signature "mmf" is handwritten in dark ink.

Department of State,

Washington, May 20, 1996.

## **ENCLOSURE**

The following recommended provisions do NOT constitute an approved or model employment contract. Other contract provisions relating to the employment relationship may be required or advised under federal, state or local law. All employment contracts must conform to all applicable federal laws and the laws of the state and municipality of the place of employment. The embassy or employer may wish to consult counsel to ensure conformance of the contract with all applicable laws. The recommended provisions listed below are provided as guidance only in order to assist in the establishment of a good faith, fair employer-employee relationship.

### **DUTIES**

A description of the employee's duties.

### **WAGES**

1. The wages to be paid on an hourly basis are:  
(Such wages must be paid at the rate of no less than the U.S. federal or state minimum wage, whichever is higher. State law may set a higher rate. Currently, the federal minimum wage is \$4.25 per hour for all hours on duty; the current District of Columbia minimum wage is \$5.25 per hour; minimum wage in the fifty states may vary and must be checked. Wages must at no time be less and must be adjusted automatically in keeping with any applicable increases in the federal or state minimum wage.)
2. Wages will be paid no less frequently than monthly.
3. The number of days of paid vacation per year are \_\_\_\_.
4. The number of paid days for illness per year are \_\_\_\_.
5. The number of paid national or religious holidays per year are \_\_\_\_.
6. The employer will provide the employee transportation, free of charge, to the United States at the beginning of the employee's assignment and to the country of the employer's

onward assignment or to the employee's country of normal residence at the termination of the employee's assignment. This provision shall continue to apply in the event that the contract expires or is terminated by either party, and regardless of the reasons for termination.

#### **HOURS OF WORK AND OVERTIME**

1. Work schedule:

- a) The guaranteed number of regular work hours per week is: \_\_\_\_\_. (Minimum guarantee of 35 regular work hours per week.)
  - b) The maximum amount of overtime work (beyond 40 hours per week) which may be required of the employee is \_\_\_\_\_ hours per week and the rate for overtime payment is \_\_\_\_\_. (Total number of work hours per week, including overtime, shall not exceed \_\_\_\_\_. Under federal law, the rate of overtime pay need not exceed the regular hourly rate if the employee resides in the home of the employer; state law on the overtime rate must be checked. If the employee does not reside with the employer, overtime for hours in excess of 40 must be paid at the rate of time and a half.)
  - c) Regular days) off is/are \_\_\_\_\_.  
The employer will not require the employee to work more than six days in any seven day period.
2. The employee will not be required as a condition of employment to remain on the employer's premises other than during regular or overtime working hours.

#### **REQUIREMENTS**

1. The employee, while in the United States in A-3 visa status, agrees not to accept any other employment while working for the employer.
2. The employer agrees not to withhold the passport of the employee.
3. Consistent with Article 41 of the Vienna Convention on Diplomatic Relations or Article 55 of the Vienna Convention on Consular Relations, and without prejudice to privileges and immunities, the employer will respect applicable laws and regulations of the United States and of the state and local jurisdiction pertaining to labor or employment.

**DOCUMENTATION**

1. To avoid possible misunderstanding between the parties, and as required by law, the employer will maintain for the duration of actual employment plus three years, the following records:
  - a) The employee's full name, date and place of birth, gender and occupation;
  - b) The employee's home address and telephone number in the United States;
  - c) A record of the number of hours worked daily and weekly; and
  - d) A copy of a check or dated receipt covering each pay period, including a record of any deductions made.

### To recipients of A3 and G5 visas:

You have received an A3 or G5 visa as an attendant or personal employee of an official or other employee of a diplomatic or consular mission or international organization.

You and your employer have a written employment contract, which is considered by the United States to be a true statement of your terms of employment. Among the terms of the contract are the following:

- This contract provides for you to be paid at least the minimum or prevailing wage, whichever is greater, for every hour you work. In December 1999, the US minimum wage was \$5.15 per hour.
- When not working, you cannot be required by your employer to remain in your employer's home or at your place of employment.
- Your passport must always be available to you.

Employers should honor all provisions of the contract, including provisions for days off and regular payment. You should keep a copy of this contract.

When you are in the United States, you should be treated fairly and lawfully. If you are to live in the house of your employer, you should be provided with living and working conditions that are within the prevailing standards of the United States.

The laws of the United States and the individual states may give you additional rights, including protection from abuse, that may not have been written in the contract that you signed. These rights are yours and should not be denied to you.

**If, after you have arrived in the United States, you believe that these rights are not being observed, you may seek assistance by calling 1-888-428-7581.**

You may wish to keep this message with your passport or with your other important documents (such as your employment contract) while you are in the United States.